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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

NO._____

IN THE
SUPREME COURT OF THE UNITED
STATES OF AMERICA

ZEKE LAYMAN
Petitioner

vs.

INTERNAL REVENUE SERVICE
OF THE UNITED STATES OF AMERICA
Respondent

and

DEPARTMENT OF TREASURY
Respondent

ON
PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES
SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

ZEKE LAYMAN
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In Properia Persona

QUESTIONS PRESENTED FOR REVIEW

1. Are the parties to litigation and the Federal Courts bound by the California State law, statutes, (i.e., the Uniform Fraudulent Transfer Act of Cal. Civ. Code § 3439.04) when ruling on a fraudulent transfer?

2. Is California Law the controlling law on real property within the State of California?

3. Was defendants IRS cause of action extinguished under California Civil Code § 3439.09 prior to the filing of their complaint?

4. Did the District Court, and the Ninth Circuit Court of Appeals error in failing to address all of California's law regarding fraudulent transfer, (i.e., the Uniform Fraudulent Transfer Act) statutes of Cal. Civ. Code § 3439.04 when ruling on a fraudulent transfer?

5. Was the District Court's Judgment of "Fraudulent Transfer" **void on its face for lack of jurisdiction**?

6. Because the people of the State of California have spoken by and through their State Legislature, to proscribed statutes of extinguishment, (i e Cal. Civ. Code § 3439.04) then is it a violation of the people's common law right for the District Court, and the Ninth Circuit, to ignore portions or all of State Law, when ruling on State real property?

PARTIES TO THIS PROCEEDING:

The caption in the style of this writ contains the names of all the parties subject to this proceeding, such parties being, ZEKE LAYMAN, Petitioner vs. INTERNAL REVENUE SERVICE OF THE UNITED STATES OF AMERICA, Respondent, and DEPARTMENT OF TREASURY Respondent.

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Proof of Service, is not attached, but was mailed with Certiorari to United States Supreme Court Clerk.

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UNITED STATES CONSTITUTION

The Tenth Amendment to the United States Constitution provides:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people".

United States Constitution, 10th Amendment 20,24

JURISDICTION

Jurisdiction of this Honorable Court is invoked to hear petitioner's Petition For Writ of Certiorari, because;

1. Departure from the accepted and usual course of judicial proceedings, as to call for an exercise of this Honorable Court's supervisory power.

2. **This matter is one of first impression**, the question presented herein has, to date, been the subject of several decisions by the Court of Appeals for the Ninth and Fifth circuits, which as this court will see are all in conflict with each other pursuant to the United States Supreme Court Rule 10 (a)-(c) and, 13.3 to enforce the Constitutional protection.

On December 28th 2001, the Ninth Circuit Court of Appeals made their decision denying petitioner's appeal and affirming the District Court's order.

Accordingly this Petition For Writ of Certiorari is filed within the (90) days after the decision of the Ninth Circuit Court of Appeals.

INTRODUCTION
BACKGROUND OF THE CASE

On Nov. 23rd 1987, Irwin and Darline Ruth Koff transferred their interest in the subject real property to this instant petitioner Zeke Layman, for consideration of $40.00 in silver and other valuable considerations. The deed to the subject real property was transferred and the transaction

witnessed by a notary. There were no liens attached or recorded against the real property at the time of the transfer.

On Feb. 27th 1990, and on April 2nd 1990, the IRS recorded liens for delinquent taxes resulting from the Koff's failure to file income tax returns for the tax years 1982-1985.

Petitioner Zeke Layman filed a complaint at Inyo County Superior Court, on January 11th 1999, to quiet the title of the real property, regarding the federal tax liens recorded on his real property.

Defendants the Internal Revenue Service, an agency of the United States, filed a removal action to the United States District Court Eastern District Fresno Division on March 4th 1999.

Petitioner Zeke Layman, filed his motion for summary judgment on Aug. 25th 1999.

The Internal Revenue Service filed it's opposition and a purported, self styled, cross-motion for summary judgment on Oct. 5th 1999. The alleged cross-motion did not give notice as required by the Local Rules or the Federal Civ. Rules of Procedure § 8, nor was petitioner given notice of a hearing date for the alleged cross- motion, nor was plaintiff given an opportunity to oppose defendant's self styled cross-motion.

Defendants in their opposition to petitioner's motion for summary judgment stated that, "Because there is sufficient evidence to create a triable issue of fact as to whether the subject transfer of property was fraudulent and void, plaintiff's motion for summary judgment must be denied."

Petitioner Zeke Layman, filed his response to the court's inquiry as to the statute of limitation of the "Quiet Title Action"

and exhaustion of administrative remedies on Nov. 12th 1999.

Petitioner's Layman's attorney filed a response to the court's request for further briefing on the statute of limitation for quite title on Nov. 15th 1999. The defendants Internal Revenue Service, filed a reply on Nov. 22nd 1999.

The summary judgment came on regularly for hearing on Thursday, Dec. 4th 1999, at courtroom 4 before the Honorable Sandra M. Snyder, Magistrate Judge of the United States District Court, who issued an order, "Granting The United States' Cross-Motion for Summary Judgment, and Denying Layman's Motion For Summary Judgment" entered into the record on Dec. 21st 1999. Petitioner Zeke Layman's attorney resigned from the case and refused to proceed on appeal or pursue any other form of remedy.

On Dec 14th 2000, petitioner filed a Motion to Set Aside Or Reconsideration 60 (b) upon the grounds:

1. That the District Court's order of December 23rd 1999, Granting The United States' Cross-Motion for Summary Judgment, and Denying Layman's Motion For Summary Judgment **is a legal nullity, void judgment on its face**, and called into question by the very admission that the Honorable Sandra M. Snyder, United States Magistrate Judge ruled on factual issues in her order Granting The United States' Cross-Motion for Summary Judgment, and Denying Layman's Motion For Summary Judgment. The court in ruling on summary judgment was never given the jurisdiction to rule on the material facts of this case.

The district court's order of "Granting The United States' Cross-Motion for Summary Judgment, and Denying

Layman's Motion For Summary Judgment" clearly determines material facts, as stated in her judgment (page 6 line 25, 26) and these questions of material fact are for the fact finder, jury to decide not the court. Because the court ruled on the facts, the court's Judgment is a **legal nullity, and the judgment void on it's face.**

2. The District Court's Judgment is a legal nullity, and a void judgment, on the grounds that the statute of extinguishment Cal. Civ. Code 3439.04-3439.09, on fraudulent conveyance extinguished defendants IRS claim as matter of law, and the District Court lacked jurisdiction to issue an order granting the IRS motion for summary judgment.

3. Denial of a Jury Trial regarding Fraudulent Conveyance, and nominee liens. The question of whether or not a fraudulent transfer occurred is a matter of fact that must absolutely be decided by a jury trial. This would apply to issues of fraudulent return, fraudulent conveyance, and the fact issue of taxability, for the nominee. Petitioner Zeke Layman's right to a jury trial to decide the facts of this instant case have been taken without due-process of law. The United States Constitution clearly provides that defendant has a right to jury trial and upon these grounds the Honorable District Court's Judgment is a legal nullity, and a void judgment

4. There is excusable neglect evident by the record, in that petitioner Zeke Layman's attorney failed to know the proper procedure for summary judgment, or appeal. Petitioner's attorney failed to file further declaration or affidavits to support Layman's opposition to summary judgment and because defendant's complaint failed to give notice as

proscribed by the Local Rule and the Fed. Civ. Rules of Procedure § 8, the court lacked jurisdiction to grant defendants relief.

Defendants filed their opposition to petitioner's Motion to Set Aside or Reconsider on Dec, 28th 2000.

Layman filed an objection to magistrate Sandra M. Snyder, hearing petitioner's Motion to Set Aside or Reconsider.

On Jan. 16th 2001, petitioner filed his reply to defendants opposition, and an affidavit.

Over petitioner's objection, on January 22nd 2000, the Honorable Magistrate Judge Sandra M. Snyder, made an "Order Denying Motion to Set Aside Order Or Reconsideration". That Court's ruling stated:

> "The Court has reviewed its order to the motions for summary judgement and stands by its reasoning and legal analysis. Layman has not set forth any new facts which would justify a motion under Rule 60 (b). Layman is not entitled to a trial where the respective motions for summary judgement revealed that there were no disputed material facts. Further, as properly set forth by defendant, even if there were disputed material facts, Layman would only have been entitled to a bench trial, not a jury trial, pursuant to 28 U.S.C. § 2409a(f). For these reasons, Layman's motion is hereby DENIED."

On February 26th 2001, petitioner filed a "Notice of Appeal" from the court's denial of petitioner's 60 (b) motion. Also on February 26th 2001, petitioner filed "Notice to the Court Clerk to Prepare the Clerk's Transcript"

Petitioner submitted his Opening Brief, and Reply Brief in a timely fashion, the defendant's submitted their brief in Opposition in a timely fashion. On December 28th 2001, the Ninth Circuit Court of Appeals made their decision in this case stating that, "On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED"

This petition follows.

REASONS FOR GRANTING THIS WRIT

First, this matter is one of first impression, the question presented has to date, been the subject of several decisions and much controversy by the District Courts and Court of Appeals for the Ninth and Fifth circuits, as well as the Florida Supreme Court, in United States v. Summerlin, 310 U.S. 414, 60.

United States v.Gleneagles Inv. Co., 565 F.Supp 556,583 (M.D.Pa.1983). (state statute of limitations held not to apply to action by United States based on Uniform Fraudulent Conveyance Act)". Uniform Fraudulent Transfer Act §9, 7A U.L.A. 665-66 (1984) (Commentary).

As this Honorable Court will soon see the cases of the Appeal Court as well as the District Court decisions are in conflict with each other, leaving petitioner's remedy at the fate of his geographic location, and at the whim of the different Judges,(i e if petitioner's argument would have been heard in

Hawaii, as in Vellalos, petitioner would have been heard according to State Law).

However because petitioner was heard in the District Court, and Ninth Circuit, for the State of California, both Court's have ignored California State Law, and failed to address the argument presented by petitioner (i e Cal. State Statute of Extinguishment Cal. Civ. Code 3439.09), and now the Court's are allowing the IRS to take property from petitioner for the tax liability of another. The facts in this case here closely parallel the facts of Vellalos .

Petitioner calls on this Honorable Courts for an exercise of supervisory power to settle the issue of California State Law of Statute of Extinguishment Cal. Civ. Code 3439.09.

Secondly, to decide under what circumstances State Law is preempted by federal law regarding real property and rights to that property within the State of California.

Third, to decide if the people of the State of California's common law rights have been abridged or violated by the Court's failure hear the cases as proscribed by their State legislature. Because the people have spoken by and through their State Legislature to proscribed statutes of extinguishment (i e Cal. Civ. Code § 3439.04-§ 3439.09) any departure from that legislative directive is a violation of the people's common law right. The District Court, and the Court of Appeals, practice of ignoring portions, or all of State Law, when ruling on State Real Property in federal courts is a violation of law, Constitution 10th Amendment and abuse of discretion. This

refusal of the Federal Courts to hear and listen to the people's voice as spoken through their State legislature also violates the peoples common law rights.

Fourth, if the Federal Courts depart from California State Law when deciding property rights to California real property, they are in essence allowed to violate the separation of power doctrine. Because the people of the State of California have spoken by and through their legislature, the Judicial Branch of government is bound to enforce the law as proscribed by State Legislature.

Lastly, the published opinion of United States v. Vellalos 780 F. Supp. 705 (D. Haw. 1992) clearly shows that the District Court and Ninth Circuit were bound to apply California law principles; just as was stated in Vellalos. In this instant case the government sought to set aside a transfer as a "Fraudulent Transfer" and State law should have been the prevailing rule of decision.

Subsequently, **United States v. Vellalos stands in direct contradiction to United States v.Gleneagles Inv. Co., 565 F.Supp 556,583 (M.D.Pa.1983) and the Appellate Court decision in the Fifth Circuit**, in Cf. United States v. Fernon 640 F.2d 609, 612 & n. 7 (5th Cir. 1981)" (holding that fraudulent conveyance action brought by the United States under I.R.C. § 7403, are subject only to the statute of limitations found in I.R.C. 6502 (a) (1), not a state statute of limitations).

Further United States v. Summerlin, 310 U.S. 414, 60

only adds to this confusion, and dissension between the different Circuit Court of Appeals and District Courts, in their application of United States v. Fernon 640 F.2d 609, 612 & n. 7 (5th Cir. 1981)" and United States v. Vellalos, 780 F. Supp. 705 (D. Haw. 1992).

Although the framers of the UFTA (California Legislative Committee) were specific in providing a literal extinguishment of the cause of action. The intent of the UFTA is to completely extinguish the statutory cause of action following the expiration of the delineated time period. Section 3439.09 is not a Statute of limitations but rather an extinguishment of a substantive cause of action.

Assuming, arguendo, section 3439.09 is construed as a statute of limitations provision, the U.S. Supreme Court has not held Summerlin controlling in all cases. In United States v. California, 507 U.S. 746, 758 (1993), THE COURT STATED "WHETHER IN GENERAL A STATE-LAW ACTION BROUGHT BY THE UNITED States is subjected to a federal or state statute of limitations is a difficult question. We need not resolve it today". California 507 U.S. at 758. If Summerlin controlled all state statutes of limitations, the Court could have said so. Instead they left the question open.

The Court did not hold that whenever the United States bring suit to maintain a claim under state law, only federal statute of limitations apply.

Although the questions presented are questions of first impression, review by this Court is necessary to stop

discriminative practices and application of State Laws regarding real property within the State of California. This Court guidance is also necessary to promote uniform application of State law within the boundaries of the State.

The Appellate Courts as well as the District Court decisions are confusing and in conflict with each other, leaving petitioner's remedy at the fate of his geographic location, or at the whim of a Judge that is familiar or unfamiliar with the cases and application of California law (i. e. Civ. Code 3439.09), regarding "Fraudulent Transfer".

As argued in petitioner's 60 (b) motion before the Honorable Sandra M. Snyder Magistrate Judge of the District Court, and the Ninth Circuit Court of Appeals the Judgment of the District Court is a **legal nullity, and a void judgment**, on the grounds of;

1. Statute of extinguishment Cal. Civ. Code 3439.09 extinguished any claim of fraudulent conveyance, or fraudulent transfer brought by defendants IRS, as matter of law, and the District Court lacked jurisdiction to issue an order granting the IRS motion for summary judgment against petitioner.

2. When the government sought and received a benefit under California statutes pursuant to Cal. Civ. Code § 3439.04-3439.09, defendant's IRS, cause of action was extinguished as matter of law 5 to 6 years before any complaint was ever filed, leaving the judgment of the District Court a **legal nullity, and a void judgment on its face**.

3. Petitioner filed a timely Fed. Rule Civ. Pro. § 60 (b)

motion in the lower Courts for relief which states in relevant part, on motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceedings for the following reasons:

(1) **Mistake; Inadvertence; Surprise, or Excusable Neglect;**

(4) **the judgment is void**;

(6) **any other reason justifying relief from the operation of the judgment.**

The District Court's denial and Ninth Circuit Court of Appeals, affirmation of the district court's denial of petitioner's 60 (b) motion, without addressing whether or not the District Court's Judgment is a **legal nullity, and a void judgment on its face**, is in effect the Ninth Circuit Court of Appeal's sanction of departure from the accepted and usual course of judicial proceedings. This calls for an exercise of this Honorable Court's supervisory power pursuant United States Supreme Court Rule 10 (a) to enforce Constitutional protection.

This matter has never previously been head before this court, and the Supreme Court of this United States has remained silent concerning the Uniform Fraudulent Transfer Act (UFTA), more particular the application of California law, and Cal. Civil Code § 3439.04 -3439.09, to fraudulent transfer suits in federal courts, **making these questions, one of first impression.**

A lack of such direction by this Supreme Court, promotes discriminative application of State law to litigants. (i e. had this

instant case been heard in Hawaii, the Court would have dismissed the governments suit under the teachings of Vellalos)

Unless and until this Supreme Court of this United States reviews by way of Certiorari petitioner's questions, setting forth some direction, the discriminative application of the California State law (UFTA) will continue.

This Court is requested to setforth some direction regarding (UFTA) matters for all courts to follow to assure the people of this United States, at all times during court proceedings on (UFTA) matters, will be treated equally and uniformly.

If petitioner is denied this right to apply California Law, regarding his real property, and be heard fairly to resolve these issues, what hope or confidence do the people have in their Courts to protect their property rights or in "JUSTICE AND LIBERTY FOR ALL"?

LEGAL ARGUMENT

1. As argued in petitioner's 60 (b) motion before the Honorable Sandra M. Snyder Magistrate Judge of the District Court, and the Ninth Circuit Court of Appeals, petitioner contends that the Judgment of the District Court is a **legal nullity, and a void judgment on its face**, on the grounds that the statute of extinguishment Cal. Civ. Code 3439.09 extinguished any claim of defendants IRS of fraudulent

conveyance as matter of law.

All of petitioner's efforts to have this decision reviewed in consideration of **a void judgment on its face** under Fed. Civ. Pro. 60 (b) have been thwarted at every turn. Both the District Court and the Ninth Circuit Court of Appeal's decision fail to address the application of, a void judgment, mistake, inadvertence, excusable neglect, or the California Uniform Fraudulent Transfer Act. The Honorable Magistrate Judge refused to hear petitioner's 60 (b) motion, or to address the issue as a **legal nullity, and a void judgment on its face**.

California's Uniform Fraudulent Transfer Act (UFTA) does extinguish the right of the United States to bring suit

A. The state of California adopted the Uniform Fraudulent Transfer Act ("UFTA") in 1986, effective for transfers made or obligations incurred on or after January 1,1987. See Cal. Civ. Code § 3439.12 (West 1995). The California Uniform Fraudulent Conveyance Act ("UFCA") and the UFTA are statutory causes of action having as their historical background rights which existed at common law. See In re Agricultural Research & Technology Group, Inc., 916 F.2d 528, 534 (9th Cir. 1990) (Hawaii UFTA is declaratory of common law); Osawa v. Orishi, 206 P.2d 498, 503 (Wash. 1949) (UFTA is declaratory of the common law); In re Bay Plastics, Inc. 187 B.R. 315, 322 (Bankr. S.D. Cal. 1995) (to the

same effect; discussing California UFCA and California UFTA).

Unlike its predecessor California UFCA, the California UFTA contains an "extinguishment" provision. The framers of the UFTA (California Legislative Committee) were specific in providing a literal extinguishment of a cause of action.

State framers of the Uniform Transfer Act have been specific in providing for a literal extinguishment of the cause of action upon expiration of the prescribed time period.

No overriding national concern has been suggested to prevent states from passing fraudulent conveyance laws which have extinguishment provisions as part of the state statutory scheme. Section 3439.09 of the California Uniform Fraudulent Transfer Act extinguishes the government's right to maintain a cause of action for fraudulent conveyance under state law.

The intent of the UFTA is to completely extinguish the statutory cause of action following the expiration of the delineated time period. Section 3439.09 is not a Statute of limitations but rather an extinguishment of a substantive cause of action.

Here, the government seeks to set aside a transfer or conveyances of real property pursuant to Cal. Civil Code sections 3439.04 -3439.09.

When a cause of action with respect to a fraudulent transfer is brought under subdivision (a) of section 3439.09, the claim is extinguished "within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have

been discovered by the claimant." Cal. Civ. Code § 3439.09(a).

When a cause of action is brought under subdivision (b) of section 3439.09 the claim is extinguished "within four years after the transfer was made or the obligation was incurred." Cal. Civ. Code section 3439.09 (b).

Section 3439.09 of the UFTA abolishes the right as well as the remedy. Unlike the Florida statute of limitations considered in Summerlin and its progeny, the UFTA contains an "extinguishment" provision which does not affect the underlying debt sought to be enforced, rather it bars the right to set aside the wrongful transfer of property. A statute of limitations bars a remedy after the expiration of a certain period of time, contrary to the UFTA's extinguishment provision which bars the entire cause of action.

The UFTA's extinguishment provision is an element of the cause of action to set aside a fraudulent conveyance and requires the action be commenced within four years, or the action does not exist under state law.

The UFTA's extinguishment provision, differs from a traditional statute of limitations because it places a substantive condition on the accrual of a fraudulent transfer action. United States v. Bacon, 82 F.3d 822, 824-825 (9th Cir. 1996).

Because the UFTA seeks to effect the government's substantive right to bring a fraudulent transfer action it is applicable to all parties who seek relief under the statute, including the United States government. Bacon, 82 F.3d at 824; see Vellalos, 780 F.Supp. at 708.

The California Legislative Committee explicitly stated that this extinguishment provision of section 3439.09 was created to bar actions asserted by the United States under the Summerlin principle, this section is new. Its purpose is to make clear that lapse of the statutory periods prescribed by the section BARS THE RIGHT AND NOT MERELY THE REMEDY. See Restatement of Conflict of Laws 2d Section 143 comments (b) and (c) (1971). The section rejects the rule applied in United States v. Gleneagles Inv. Co., 565 F Supp. 556, 583 (M.D. Pa. 1983) (state statute of limitations held not to apply to actions by United States based on Uniform Fraudulent Conveyance Act). Cal. Civ. Code section 3439.09 (Legislative Committee Comment 1) (emphasis added)

In providing that the right was "extinguished", the Legislature was attempting to rely upon decisions that avoided the general rule that the United States, as sovereign, is not bound by state-imposed limitation periods.

As per the holding in Summerlin, 310 U.S. at 416, that the United States is not bound by state statutes of limitations period, the State Legislature integrated into a statute a new cause of action the UFTA's extinguishment provision which in this case defendants IRS chose to exercise. If defendants IRS complaint sought relief under 26 U.S.C. § 7403 this section also depends on state law to define the nature and extent of the property rights involved.

Indeed, in the specific context of this case, it is unquestioned that the State has adopted UFTA and the

"extinguishment" provision for the very purpose of attempting to circumvent the rule that the United States is not subject to State statutes of limitations but, defendants IRS cannot escape pleading under State Law, on "Fraudulent Transfer" matters because the U. S. Congress, has never adopted any "Fraudulent Transfer" or Fraudulent Conveyance statutes. Here the people of California have spoken by and through their State Legislature to proscribe statutes such as the UFTA..

The real question is how and when does State Law apply to issues of "Fraudulent Transfer", and is the Judgment of the District Court a **legal nullity, and a void judgment on its face**, on the grounds that the statute of extinguishment Cal. Civ. Code 3439.04 extinguished any cause of action by defendants IRS of fraudulent conveyance, or fraudulent transfer, as a matter of law. The District Courts decision of fraudulent transfer on Nov. 23rd 1987 was clearly more than 10 ½ years after the property was transferred to petitioner.

As In Vellalos, the United States brought an action under Section 7403 to reduce a judgement for outstanding federal tax assessments and to foreclose federal tax liens on a parcel of real property. The taxpayers had made a conveyance to their son, which the Government contended was fraudulent under the UFTA.

Vellalos held, that fraudulent conveyance actions are exclusively creatures of State statute. In doing so the district court reasoned that Hawaii had the power to limit the availability of the cause of action to any litigant--including the

United States--by virtue of its having created the cause of action in the first place (780 F.Supp at 708).

This instant case parallels with Vellalos, in that the government in both cases was seeking to take advantage of a right that is entirely within the domain of the State law, set forth by State Legislature. This right was created by a State statute and specifically limited by the text of that statute. This is not a straight forward question of debt collection under the common law as was addressed by the Supreme Court in **Summerlin.**

The parallel of Vellalos, and this instant case, properly depicts the discrimination suffered by petitioner due to his geographic location. Because the district court ruled in Vellalos, that Hawaii had the power to limit the availability of the cause of action to any litigant--including the United States--by virtue of its having created the cause of action in the first place, (780 F. Supp at 708) the causes of action against Vellalos, was extinguished under State Law. Herein lies the discrimination due to petitioner's geographic location.

Petitioner's right to an effective remedy under California State Law, was at the mercy of his geographic location. In California, Federal Courts refuse to rule and apply that California has the power to limit the availability of a cause of action to any litigant--including the United States--by virtue of its having created the cause of action in the first place.(i. e. UFTA)

Defendants IRS attempted to reach the California real property of Zeke Layman under the benefit of California law

Cal. Civ. Code § 3439.04-3439.09, to satisfy the alleged debt owed by petitioner's parent just as in **Vellalos**.

It is undisputed that defendant's IRS cause of action of "Fraudulent Transfer" brought by the United States falls outside the extinguishment time period established by the provisions of California Civil Code § 3439.04-3439.09

At issue, is (1) whether this court should apply the California Civil Code § 3439.04- 3439.09, (UFTA) fraudulent transfer statute of extinguishment to extinguish defendant's IRS, claims, (2) if the IRS cause of action was extinguished prior to its filing in the court, (3) and lastly is the District Court's **order void on its face.**

THE DISTINCTION BETWEEN THE GOVERNMENT'S COMMON LAW AND A STATE STATUTORY RIGHT CREATED BY CALIFORNIA CIVIL CODE § 3439.09

B. There is an important distinction between cases involving the government's common law rights to collect on a debt and cases involving a carefully delineated State Statutory right created by California Civil Code, Section 3439.09, which is the codification of the Uniform Fraudulent Transfer Act ("UFTA").

The UFTA California statute of extinguishment is clearly in contradistinction the statute of limitations present in the Florida statute, that was considered in **Summerlin** and its progeny.

In this regard, the term "statute of limitation" must not be confused with the "extinguishment" of a cause of action or claim. A state statute of limitations does not bind the federal government in enforcing its rights. United States v. Summerlin, 310 U.S. 414, 60 S.Ct 1019, 84 L.Ed. 1283 (1940)

The UFTA contains an "extinguishment" provision where a statute of limitations bars the remedy after the expiration of a certain period of time. Here the UFTA's extinguishment provision bars the entire cause of action after four years.

It is clear that the intent of the UFTA is to completely extinguish a State statutory cause of action of fraudulent conveyance and fraudulent transfer following the expiration of the delineated time period in California Civil Code § 3439.04-3439.09. The next question, is whether the State of California Legislature, has the authority to limit the availability of a cause of action to any litigant--including the United States by create a new statutory cause of action California Civil Code § 3439.04-3439.09.

The Tenth Amendment to the United States Constitution provides:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people".

Under the U.S. Const. Amend. X. the law of real property has traditionally been within the province of the States.

In the lower courts the government has failed to cite any federal statutes that restrict the States right to legislate in the area of fraudulent transfers. No invalidity of the California Fraudulent Transfer Act, can be found.

The United States (IRS) is seeking to take advantage of a State statutory right to set aside the fraudulent transfer of petitioner Zeke Layman's real property, which is entirely within the domain of the California State Law California Civil Code § 3439. This right was created by a State statute and specifically limits the availability of a cause of action to any litigant--including the United States under the text of that statute.

The government (IRS) seeks to take advantage of rights created by the people of the State of California by and through their Legislature, while at the same time seeking to avoid the extinguishment clause, imposed by the very same statutes defendant's seek relief under.

Federal Courts should not have the right to make a ruling, or give a remedy to the Government (IRS) by applying a portion of California State Law, and rejecting or disregarding the remainder of the State created cause of action.(UFTA)

To endorse the government's position would be in effect a stripping away of State Legislative authority, and thereby nullify the voter's direction. Such a violation, of the people's common law right, to proscribe and prescribe the laws, by and through their Legislature, **would be a taking of property without due-process of law.**

State law determines what constitutes a property interest

or right to property to which a federal tax lien may attach. **Big Heart Pipeline Corporation v. United States of America, 835 F.2d 766, 767 (10th Cir. 1979)**

The subject real property in this action is a residence located at 550 Sunset Ln. Lone Pine, California, which was conveyed to petitioner Zeke Layman, Under California State law on Nov. 23rd 1987. Any attack by defendant's IRS, falls under California State Law California Civil Code § 3439.04-3439.09 statute of extinguishment on fraudulent conveyance.

Because the defendant IRS brought their cause of action against petitioner and his real property, more than 10 years after the transfer, any cause of action regarding this transfer was extinguished as matter of California law as set forth by the Legislature.

Where California State Legislature intended to extinguish a cause of action entirely--not merely bar it with a statute of limitations--the State's Law applies to the Federal government and will "extinguish" their claims.

This begs the question, was the District Court's Judgment of "Fraudulent Transfer" **void on its face**, because defendants IRS, cause of action was extinguished under California Civil Code § 3439.09 long before their complaint was filed in the Federal Court?

To the extent the government (IRS) desires a universally applicable statute of limitations period with which to combat fraudulent transfers, Congress may enact a federal fraudulent transfer law to govern transactions that may have a federal

interest.

Although there is no such federal fraudulent transfer law, 26 U.S.C. section 6901(c) sets forth a summary procedure by which the IRS can collect taxes from transferees who are found to be fraudulent transferees under State Law.

This section, however, has even a shorter limitations period than the California law. See 26 U.S.C. section 6901(c)(initial transferee remains liable for a period of one year after the expiration of the period of limitation for assessment against the transferor). It is only because the government is barred by this federal statute of limitations that it attempts to bring an action directly under the state fraudulent conveyance statute, instead of under the summary procedures set forth in 26 U.S.C. section 6901(c).

Defendant's IRS, failure to bring an action within the time required by the Uniform Fraudulent Transfer Act extinguishes defendant's claim or cause of action to set aside the 1987 transfer of the subject real property to petitioner.

Clause (4) of Rule 60(b) allows a party or his legal representative relief from a void judgment. Such a judgment is legally ineffective, or as sometimes stated, a nullity. Williams v. North Carolina 325 U.S. 226 (1945); Kalb v. Feurestein 308 U.S. 433 (1940); Jordon v. Gilligan 500 F.2d 701 (6th Cir 1974), cert denied 421 U.S. 991 (1975).

The District Court's judgment is brought into the scope of **a void judgment on its face**, under the UFTA § 3439.04-3439.09 The UFTA extinguishes any suit brought more than

4 years after the alleged fraudulent transfer. Defendants IRS, cross-motion for summary judgment was filed on OCT. 5th 1999, more than 11+ years after the property was transferred to petitioner.

Defendants IRS cause of action was extinguished under California Civil Code § 3439.09.

This begs the question, was the District Court's Judgment of "Fraudulent Transfer" **void on its face for lack of jurisdiction** and subject to attack on a Fed. Rule of Civ. Pro. § 60 (b) motion?

CONCLUSION

For generations the Supreme Court of this United States has been silent concerning the Uniform Fraudulent Transfer Act (UFTA), more particular the California Civil Code of Procedure § 3439.09, and the applicability of the California law, (UFTA) in Federal Courts.

A lack of such direction by our Supreme Court, promotes discriminative application of the California State law. This Supreme Court needs to set forth some direction for the Circuit Courts to follow on these matters.

Honorable Justices of the Mighty United States Supreme Court, we can not let this ruling stand or condone a ruling in direct violation of the United States Constitution, 10th Amendment.

If this Honorable Supreme Court refuses to Grant review by Certiorari, it will in effect endorse the government's

position of stripping away of State Legislative authority, and thereby nullify the voter's direction, and the people's common law right, to proscribe and prescribe the laws, by and through their Legislature, a threat which presently exists against the peace and dignity of the people of this nation.

The issue herein requiring settlement by this Honorable Court is not only for this petitioner but also for the general interest of the public within the State of California. The United States Supreme Court, the final authority in this nation on matters of law, and the guardian of the liberties of the American People, needs to exercise its power to set forth a standard of how California Law effects the people's real property rights within the State of California.

The petitioner respectfully urges this Honorable Court to exercise its independent judgment, and answer the questions presented herein of first impression to protect uniformity of law and petitioner's common law right to proscribe and prescribe the laws, by and through his State Legislature.

For the reasons setforth herein, and upon all papers, files and other pleadings in this action, and upon such further oral and documentary evidence and argument as may be presented at or before any hearing on this matter, petitioner Zeke Layman, request this Honorable Supreme Court to review, the Questions presented by this Petition For Certiorari.

Date May 27, 2002

Respectfully Submitted

Zeke Layman

Petitioner Zeke Layman in Pro Per

App. 1

OPINION BELOW

NOT FOR PUBLICATION

FILED Dec. 28 2001

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ZEKE LAYMAN,
Plaintiff- Appellant

v.

UNITED STATES OF AMERICA
Defendants-Appellees.
DEPARTMENT OF TREASURY; INTERNAL REVENUE SERVICE,
Defendants

DEC. 28 2001

CATHY A. CATTERSON, CLERK

U.S. COURT OF APPEALS

No. 01-1539

DC# CV-99-05239-SMS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Sandra M. Snyder, Magistrate Judge, Presiding**
Submitted December 17, 2001***

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* This disposition is not appropriate for publication

and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3

** The parties consented in writing to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

*** The panel unanimously finds this case suitable for decision without oral argument, and denies Layman's request for oral argument. See Fed. R. App. P. 34(a)(2).

Before: SCHROEDER, Chief Judge, TROTT and PAE, Circuit Judges.

Zeke Layman appeals pro se the district court's order denying his Fed. R. Civ. P. 60(b) motion for relief from the district court's summary judgement in favor of defendants. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review for abuse of discretion an order denying a Fed. R. Civ. P. 60(b) motion, *Allmerica Fin. Life Ins. & Annuity Co. v. Llewellyn*, 139 F.3d 664, 665 (9th Cir. 1998), and we affirm.

We lack jurisdiction to address Layman's contentions regarding the merits of the district court's original entry of judgment because Layman

both failed to file a notice of appeal within 30 days of the entry of final judgement and failed to file a timely post-judgement tolling motion. See Fed. R. App. P. 4.

Contrary to Layman's contention, the magistrate judge did not act without jurisdiction. See *Dixon v. Ylst*, 990 F.2d 478, 480 (9th Cir. 1993). In addition, Layman received a reasonable and meaningful opportunity to challenge defendant's motion for summary judgement. See Fed. R. Civ. P. 56(c); *cf. Baria v. Reno*, 232394 F.3d 1335, 1341 (9th Cir. 1996).

Because Layman failed to demonstrate any basis for relief from judgement, the district court did not abuse its discretion by denying his Rule 60(b) motion. *See Sch. Dist. No. 1J, Multnomah County v. AcandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993).

Layman's remaining contentions lack merit.

AFFIRMED.

(2)

Supreme Court, U.S.
FILED

02 503 MAR 2 8 2002

OFFICE OF THE CLERK

NO._____

IN THE

SUPREME COURT OF THE UNITED STATES OF AMERICA

ZEKE LAYMAN

Petitioner

vs.

INTERNAL REVENUE SERVICE OF THE UNITED STATES OF AMERICA

Respondent

and

DEPARTMENT OF TREASURY

Respondent

SUPPLEMENTAL APPENDIX IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

ZEKE LAYMAN
P.O. BOX 3662
Chico, Calif, 95927
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In Properia Persona

14 pp

Sup. App. 1
OPINION BELOW

FILED
Dec 21 4 12 pm'99

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
CALIFORNIA

ZEKE LAYMAN, Plaintiff,	)	CV-F 99-5239 SMS
	)	ORDER GRANTING THE
v.	)	UNITED STATES' CROSS-
	)	MOTION FOR SUMMARY
UNITED STATES OF AMERICA et al., Defendants	)	JUDGMENT, AND DENYING LAYMAN'S MOTION FOR SUMMARY JUDGMENT

The above entitled motions came on regularly for hearing on Thursday, Nov. 4, 1999, at Courtroom 4 before the Hon. Sandra M. Snyder, United States Magistrate Judge. Todd Peterson, Esq., appeared on behalf of plaintiff Zeke Layman: Catherine Cerna, Assistant U.S. Attorney, appeared on behalf of defendant United States of America.

Layman filed a complaint at Inyo County Superior Court on Jan. 11, 1999, to quiet title regarding federal tax liens recorded on the property. The United States removed the action to this court on March 4, 1999. Layman filed his motion for summary judgement on Aug. 25, 1999. The United States filed opposition and a cross-motion for summary judgment

on Oct. 5, 1999. Layman filed a reply on Nov. 1, 1999. Following oral argument, the court granted Layman's request to file further briefing. Accordingly, Layman filed a response on Nov. 15, 1999. The United States filed a reply on Nov. 22, 1999.

DISCUSSION:

"A motion for summary judgment provides a procedure for terminating without trial actions in which 'there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law.'" Schwarzer, Tashima & Wagstaffe, Fed. Civ. Proc. Before Trial ¶ 14:4 (1998) (emphasis omitted), Citing Fed. R. Civ. P. 56©). "[I]t is the moving party's burden to establish that there is 'no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.'" Id. ¶ 14:123. "'When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings. . . (T)he adverse party's response . . . must set forth specific fact showing that there is a genuine issue for trial.'" Id. ¶ 14:142 (cite omitted).

1. Layman's Motion for Summary Judgment

On Nov. 23, 1987, Irwin and Darlene Ruth Koff transferred their interest in the subject property to plaintiff Layman for consideration of $40.00 in silver.[1]

P&A 4:2-4. On Feb. 27, 1990, and on April 2, 1990, the IRS recorded liens for delinquent taxes resulting from the Koffs' failure to file income tax returns for the tax years 1982-1985. The liens were refiled on Sept. 11, 1995. Layman contends the government liens cannot attach where the property already has been transferred, even if unrecorded. The Koffs' transfer to layman was not recorded until March 30, 1992.

Although conceding the IRS "is entitled to a lien on real property for unpaid taxed", Layman contends that insofar as the property was transferred to him PRIOR to the recording of the lien, Layman has a superior interest in the property, citing Casey v. Gray, 13 C.A. 4th 611, 16 C.R.2d 583 (1993). In Casey, real property was transferred but not recorded, a money judgment was recorded against the original owner, and then the property transfer was finally recorded. The court held the money judgment, despite being recorded first, did not affect the prior transfer. Layman's

---

1

Although Layman refers to the Koffs as his parents in his P&As, 3:15-16, in a Statement dated Aug. 21, 1997, filed with a Collection Appeal Request, Layman indicates that he "met the Koff's [sic] in June of 1987 . . . ." See Kinkade Decl. Exh. F. Layman has not filed a reply addressing this factual discrepancy. This was not clarified at hearing, his counsel claiming ignorance at the Court's inquiry.

motion for summary judgment only addressed his first cause of action to quiet title.

The United States contends, in its cross-motion for summary judgment, that nevertheless the United States' tax lien is superior to Layman's unrecorded-transfer.

2. The United States' Cross-Motion For Summary Judgment

A. Quiet Title

i. Fraudulent Transfer

Notwithstanding the United States' argument as to the statute of limitations,

> if [the taxpayers] lawfully granted all of [their] interest in the property to plaintiff before the [tax liens] were recorded, then no liens would attach. "'The law is well settled that the lien of a judgment does not attach to a naked title, but only to the judgment debtor's interest in the real estate; and if he has no interest, though possessing the naked title, then no lien attaches. Thus a creditor who attaches property for his debt obtains a lien only upon the title or interest which the debtor has in the property at the time of the levy, and if at that time all title and interest has [sic] passed from him to a third person, the

creditor gets nothing by the levy.'"

Barisich v. Lewis, 226 C.A. 3d 12, 19, 275 C.R. 331, 335 (1990) (italic bracket in the original, citations omitted).

The United States, however, contends the above transfer was fraudulent, citing to Cal. Civil Code § 3439.04, which reads:

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows:

> (a) With actual intent to hinder, delay, or defraud any creditor of the debtor.
>
> (b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
>
> (1) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
>
> (2) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

The United States points to several factors here, supported by case law cited in their brief that are indicuas of fraudulent intent, to wit: the transaction

was concealed as reflected by the deed not being recorded for four and one half years, Irwin Koff recommended to Layman that he not file the deed, the Koffs transferred the property in anticipation of IRS claims, the transfer was for inadequate consideration ($40.00 versus the 1990 appraised value of $83,000), and this property transaction was part of a series of transactions that divested the Koffs of all their assets except for Irwin Koff's pension. The United States points to discrepancy of wether or not Layman is the Koffs' son and, regarding Layman's contention that the property was an early inheritance, note Layman has never declared the property on his own tax returns pursuant to Internal Revenue Code § 2503(b) (1).

In the United States' cross-motion for summary judgment, the United States distinguishes plaintiff's cited case Casey, regarding the superiority of a transfer deed predating a lien but recorded after the lien. Casey involved a judgment that was recorded after the debtor had transferred ownership interest of the property at issue. Casey would otherwise support Layman if Layman was a purchaser "in good faith" and acquired the property "for a valuable consideration". Cal. Civ. Code § 1107. Layman appears to have been neither.

Counsel for Layman appeared to be learning of the background facts here for the first time upon the United States' cross-motion for summary judgment. In his reply filed Nov. 1, 1999, he requests both motions be denied without prejudice so that he can continue with his discovery. See Fed. R. Civ. P. 56 (f). However, counsel for Layman did not "state what facts are sought[,] and show how these are reasonably

expected to create a triable issue." Schwarzer, Tashima & Wagstaffe, Fed. Civ. Proc. Before Trial ¶ 14:114.2 (1999). The Court notes that much of the facts set forth by the United States are within knowledge of Layman, and Layman did not provide any further declarations.

Nevertheless, the Court did provide Layman an opportunity to file further briefs. Again, Layman did not file any further declarations explaining or disputing facts as set forth by the United States. Following further oral argument, counsel for Layman submitted the matter on the pleadings, which the Court construes as withdrawing any possible Rule 56(f) request.

Based upon the above mentioned facts, the Court does find the transfer to have been fraudulent. Specifically, the Court finds the consideration paid for the property, $40.00, to be only nominal consideration, and that the property transfer from the Koffs to Layman was with knowledge that an assessment of unpaid taxes was quickly forthcoming. Accordingly, the Court GRANTS the United States' cross-motion and DENIES plaintiff's motion for summary judgment on this basis.

ii. Statute of Limitations

> As a sovereign, the United States is immune from suit without its consent, and the terms of its consent when granted define and circumscribe our jurisdiction. "The applicable statute of limitations is a term of consent. The failure to sue the United

States within the period of limitations is not simply a waivable defense; it deprives the district court of jurisdiction to entertain the action. Moreover, because such statutes function as a jurisdictional conditions, they must be strictly construed."

* * *

28 U.S.C. § 2401 (a) is the catchall statute of limitations provision. It says in relevant part that ". . . every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." . . .

. . . [L]awsuits brought against the United States under § 2410 (a) to quiet title are subject to the statute of limitations found in § 2401 (a).

. . . " A federal tax lien attaches to a taxpayer's property when unpaid taxes are assessed . . . ."

Nesovic v. United States, 71 F. 3d 776, 777-78 (9th Cir. 1995), cites omitted.

In the present action, taxes were assessed on Oct. 30, 1989. The United States correctly notes that in the alternative, the action would nevertheless still be barred based upon the either the dates the liens were recorded (April 16, 1990) or the date that Layman had actual knowledge of the liens (1992). Accordingly, the Court fines the action to quiet title to be barred by the applicable statute of limitations.

B. Slander of Title

Layman's second cause of action is for slander of title. Layman seeks monetary damages for this claim. "Slander of title is a false and unprivileged disparagement , oral or written, of the title to real or personal property, resulting in actual pecuniary damage." 5 Witkin, Summary of California Law, Torts § 569 (9th ed. 1988). The elements of the claim are "publication, falsity, absence of privilege, and disparagement of another's land which is relied upon by a third party and which results in pecuniary loss." Id. "[A]ctual malice or ill will is unnecessary." Id. (emphasis omitted).

The Court has found no authority supporting a plausible claim for slander of title, even construing the facts generously in favor of plaintiff. See, i.e., Erickson v. Luke, 878 F. Supp. 1364 (D. Idaho 1995) (slander of title claim rejected). Insofar as the Court has found, supra, that the transfer of title from the Koffs was fraudulent and has further found the action to quiet title to be barred under the statute of limitations, the Court accordingly finds the publication through the filing of the lien to be not false.

The United States, in its cross-motion for summary judgment, further notes Layman has not exhausted his administrative remedies regarding the slander of title claim. Layman did not address this argument directly in his response filed Nov. 1, 1999, instead suggesting he be granted leave pursuant to Rule 56(f) to conduct further discovery. At the first hearing, however, the Court granted Layman's request for an

opportunity to file further briefing. Layman did so on Nov. 15, 1999, which made only a feeble and ineffective gesture at addressing the United States' argument. Layman did not address any of the United States' Statement of Undisputed Facts in either his initial or subsequent response to the United States' cross-motion for summary judgment. Accordingly, the Courts finds no grounds for not granting the government's cross-motion for summary judgment.

CONCLUSION:

Plaintiff's motion for summary judgment is hereby DENIED, and the United States' cross-motion for summary judgment is hereby GRANTED. The Clerk of the Court is directed to enter judgment in favor of the United States.

Dated: Dec. 21, 1999

SANDRA M. SNYDER,
United States Magistrate Judge

Sup. App. 11
OPINION BELOW

FILED
Jan 22 2:53 pm 2001

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ZEKE LAYMAN, Plaintiff,	)	CV-F 99-5239 SMS
	)	ORDER DENYING
v.	)	MOTION TO SET ASIDE
	)	ORDER OR
INTERNAL	)	RECONSIDERATION
REVENUE	)	
SERVICE	)	(Doc. No. 36)
Defendants	)	

On Friday, Jan. 19, 2001, the above entitled action was regularly called on the court calendar at Courtroom 4, the Hon. Sandra M. Snyder, presiding. Plaintiff Zeke Layman appeared representing himself; Catherine Cerna, Assistant U.S. Attorney, appeared representing the defendant.

Layman filed the instant motion to set aside order or reconsideration on Dec. 14, 2000. Defendant filed opposition on Dec. 28, 2000. Layman filed an objection, a reply to opposition, and an affidavit on Jan. 16, 2001.

Layman's motion stems from this Court's Order denying Layman's motion for summary judgment and granting defendant's Cross-motion for summary

judgment. In sum, the Court found Layman had not met his burden in his motion for summary judgment and had failed to rebut the arguments set forth by defendant in defendant's cross-motion for summary judgment. That ruling was issued Dec. 21, 1999.

Layman brings the instant motion pursuant to Fed. R. Civ. Proc. 60 (b), which reads in part:

> On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59 (b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party . . . . The motion shall be made within a reasonable time, and . . . not more than one year after judgment, order, or proceeding was entered or taken.

Layman does not state under which subsection of Rule 60 (b) he brings the instant motion.

Layman first contends this Court, as an "Untied [sic] States Magistrate Judge", had no jurisdiction to rule on the motions for summary judgment. Layman is in error. While Layman's then attorney may not have fully discussed the ramifications of consenting to magistrate judge jurisdiction with his client, both

Layman's attorney and defendant consented to magistrate judge jurisdiction on June 30, 1999. This Court accordingly had jurisdiction to rule on the motions for summary judgment pursuant to 28 U.S.C. § 636 (c) . See Link v. Wabash R. R. , 370 U.S. 626, 633-34, 82 S. Ct. 1386, 1390 [8 L.Ed.2d 734] (1962) (Acts of attorney binding upon client).

The Court has reviewed its order to the motions for summary judgment and stands by its reasoning and legal analysis. Layman has not set forth any new facts which would justify a motion under Rule 60 (b). Layman is not entitled to a trial where the respective motions for summary judgment revealed that there were no disputed material facts. Further, as properly set forth by defendant, even if there were disputed material facts, Layman would only have been entitled to a bench trial, not a jury trial, pursuant to 28 U.S. C. § 2409a (f). For these reasons, Layman's motion is hereby DENIED.

DATED: 1 /22 /01

SANDRA M. SNYDER
United States Magistrate Judge